UNITED
NATIONS

CAT

Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

Distr.
GENERAL

CAT/C/47/Add.3
16 July 2001

Original: ENGLISH

COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1999

Addendum

INDONESIA*

[7 February 2001]

* The annexes to the present report can be consulted in the files of the secretariat.

GE.01-43490 (E) 280901

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I. GENERAL

1. As a State with a civil law system, Indonesia deems it necessary to have a specific regulation on the hierarchy of its laws. By this hierarchy it is hoped that the understanding of the legal system in Indonesia will be easier. In this regard, the higher law must be followed by the lower one and the lower law shall not contradict the higher one. In 1966 the People's Consultative Assembly (MPR) in its Decree No. XX introduced a decree determining the said hierarchy. However, on 18 August 2000 the MPR adopted Decree No. III of 2000 on Source of Law and the Hierarchy of Law and Regulations which regulated the hierarchy of laws in Indonesia as follows:

(a) 1945 Constitution (UUD 1945);

(b) The People's Consultative Assembly's decrees (Ketetapan MPR);

(c) Laws (Undang-undang);

(d) Government regulations in lieu of law (Perpu);

(e) Government regulations (Peraturan Pemerintah);

(f) Presidential decrees (Keputusan Presiden);

(g) Local regulations (Peraturan Daerah).

2. Since Pancasila and the 1945 Constitution are considered as the very basic legal ground for all laws and regulations, the "law" is very eminent in the legal system of Indonesia. In the past there was no specific regulation arranging the ratification of international conventions; they could be ratified by a law or by a presidential decree. However, according to the new law which has just been approved by the House of Representatives (DPR), the process of ratification of international conventions has been better organized. According to the new law, the ratification of specific international conventions which are considered very important such as in the field of human rights must be ratified through law. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified by a law, which indicated the significance of the Convention.

3. "Pancasila" is the philosophical basis of the Indonesian State. Pancasila consists of two Sanskrit words, panca, meaning five and sila, meaning principle. It comprises five inseparable and interrelated principles: Belief in the one and only God, A just and civilized humanity, The unity of Indonesia, Democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives, and Social justice for the whole of the people of Indonesia.

4. The concept of human rights is not new to Indonesia. Indonesian people had to wage a protracted struggle in the course of hundreds of years of colonial rule in order to exercise their right of self-determination, one of the most fundamental of human rights. Indonesia's commitment to the promotion and protection of human rights in the entire Indonesian territory

is derived from Pancasila. The first principle of Pancasila reaffirms the Indonesian people's belief that God does exist. It also implies that the Indonesian people believe in life after death. It emphasizes that the pursuit of sacred values will lead the people to a better life in the hereafter. The principle is embodied in article 29, section 1, of the 1945 Constitution which reads: "The State shall be based on belief in the One and Only God."

5. The second principle, A just and civilized humanity, requires that human beings be treated with due regard to their dignity as God's creatures. It emphasizes that Indonesian people do not tolerate physical or spiritual oppression of human beings by their own people or by any nations. This philosophical State principle together with values, customs, culture and traditions of the Indonesian people are very important in the promotion and protection of human rights. Endeavours to promote and protect human rights in Indonesia are based on principles of indivisibility, equality and recognition of the prevailing national conditions. The indivisibility principle implies that civil, political, economic, social and cultural rights as well as the right to development are regarded as integral parts of a whole that cannot be broken up without diminishing each one of the components. The equality principle requires that there should be balance and harmony between individual and collective rights and between the rights of the individual and his responsibility to the community and nation. This is commensurate with the nature of the human being both as an individual and a social being. Equality and harmony between freedom and responsibility are significant factors in the promotion and protection of human rights. It is commonly acknowledged that human rights are universal and the international community has also recognized and concurred that their implementation is the duty and responsibility of States, taking fully into consideration the various value systems, history, culture, political systems, level of social and economic development, and other relevant factors.

6. The unity of Indonesia as the third principle embodies the concept of nationalism, of love for one's nation and motherland. It envisages the need to always foster national unity and integrity. Pancasila nationalism demands that Indonesians avoid feelings of superiority on ethnic grounds, for reasons of ancestry and skin colour. In 1928, Indonesian youth pledged to have one country, one nation and one language, while the Indonesian coat of arms enshrines the symbol of "Bhinneka Tunggal Ika" which means "unity in diversity". Social differences in daily life should never affect national unity and integrity.

7. The fourth principle indicated that Pancasila democracy calls for decision-making through deliberations, or musyawarah, to reach a consensus, or mufakat. It is democracy that lives up to the principles of Pancasila. This implies that democratic right must always be exercised with a deep sense of responsibility to God Almighty according to one's own conviction and religious belief, with respect for humanitarian values of human dignity and integrity, and with a view to preserving and strengthening national unity and the pursuit of social justice.

8. The fifth principle, Social justice for the whole of the people of Indonesia, calls for the equitable distribution of welfare to the entire population, not in a static but in a dynamic and progressive way. This means that all the country's natural resources and national potentials should be utilized for the greatest possible good and happiness of the people. Social justice implies protection of the weak. But protection should not deny them work. On the contrary, they should work according to their abilities and fields of activity. Protection should prevent

misuse of power by the strong and ensure the rule of law. These are the sacred values of Pancasila which, as a cultural principle, should always be respected by every Indonesian because it is the ideology of the State and the life philosophy of the Indonesian people.

A. The 1945 Constitution and constitutional provisions

9. The Constitution of the Republic of Indonesia is usually referred to as the 1945 Constitution. This is partly because the Constitution was drafted and adopted in 1945 when the Republic was established. Furthermore, the articles of the 1945 Constitution spell out the ideals and the goals for which independence was proclaimed on 17 August 1945, and defended thereafter. It reflects the spirit and vigour of the time when the Constitution was shaped. Preceded by a preamble, the Constitution of the Republic of Indonesia consists of 37 articles, four transitional clauses and two additional provisions. The preamble is composed of four paragraphs and includes a condemnation of any form of colonialism in the world, a reference to Indonesia's struggle for independence, a declaration of independence and a statement of fundamental goals and principles. It further states, inter alia, that Indonesia's national independence shall be established in the unitary State of the Republic of Indonesia with sovereignty vested in the people. The State shall be based upon the following philosophical principles: Belief in the one and only God, A just and civilized humanity, The unity of Indonesia, Democracy guided by the inner wisdom of deliberations of representatives, and Social justice for the whole of the Indonesian people.

10. Guided by these fundamental principles, the basic aims of the State are to establish an Indonesian Government which shall protect all the Indonesian people and their entire motherland, advance the public welfare, develop the intellectual life of the nation, and contribute towards the establishment of a world order based on freedom, peace and social justice. This means that it is the State's obligation to protect all of its citizens.

11. The Indonesian coat of arms consists of a golden eagle, called Garuda, a figure from ancient Indonesian epics. It is also pictured on many temples from the sixth century. The eagle is a symbol of creative energy. Its principal colour, gold, suggests the greatness of the nation. The black colour represents nature. There are 17 feathers on each wing, 8 on the tail and 45 on the neck. These figures stand for the date of Indonesia's independence proclamation: 17 August 1945.

12. The national motto, "Bhinneka Tunggal Ika", is enshrined on a banner held in the eagle's talons. This old Javanese motto, introduced by Empu Tantular, a saint of the Majapahit Kingdom, in the fifteenth century, signifies the unity of the Indonesian people despite their diverse ethnic and cultural backgrounds.

13. The shield symbolizes self-defence in struggle and protection of oneself. The red and white colours on the shield's background denote the colours of the Indonesian national flag. The five symbols on the shield represent the State philosophy of Pancasila, the foundation of the Indonesian State.

14. The bar across the centre indicates the equator which passes through the islands of Sumatra, Kalimantan, Sulawesi and Halmahera. This is a reminder of the fact that the Republic of Indonesia is the only tropical country in which the people have built a free and sovereign State by their own hands.

15. The golden star on the black background in the centre of the shield represents the first principle of Pancasila, Belief in the One and Only God. The chain symbolizes successive human generations. The round links represent women and the square ones men. It is the symbol of the second principle, A just and civilized humanity. The beringin, or banyan tree, symbolizes the third principal, The unity of Indonesia. The head of the banteng, or wild bull (Bos javanicus), which is black on a red background, represents the fourth principle, Democracy guided by the inner wisdom of the deliberations of representatives. The fifth principle, Social justice for all Indonesian people, is symbolized by the gold and white paddy and cotton plant.

16. On 20 August 2000 the People's Consultative Assembly endorsed the second amendment to the 1945 Constitution. According to this second amendment there is a new chapter on human rights consisting of 10 articles.

17. According to the Pancasila State ideology as contained in the preamble to the 1945 Constitution, especially its second principle, A just and civilized humanity, no form of torture of people is acceptable. In accordance with that principle, human beings are recognized and treated as the One God's creatures, who have the same status, rights and obligations without any discrimination on the basis of their ethnicity, descendance, sex, social status, colour of skin or religion.

18. The 1945 Constitution does not explicitly contain the prohibition of torture. However, article 27, paragraph 1, of the 1945 Constitution states that: "All citizens have equal status before the law and government and shall abide by the law and the government without any exception." This article encompasses the meaning that every citizen of Indonesia has the same position before the law and has the right, which is guaranteed by the State, not to be tortured.

19. Article 25 of MPR Decree No. XVII of 1998 on Human Rights, containing Indonesia's Charter on Human Rights, states: "Every person has the right to be free from torture or treatment that insult human values."

20. Articles 4 of Law No. 39 of 1999 on Human Rights states: "The right to live, the right not to be tortured, the right of individual freedom, mind, and soul, the right not to be enslaved, the right to be admitted as individual and equal before the law, and the right not to be persecuted on the basis of retroactive law are non-derogable rights which cannot be restricted in any situation by anybody."

21. Article 422 of the Penal Code states that: "Any State official who in a criminal case uses coercion, whether to force somebody to confess, or to persuade someone in order to give information, will be put in jail for a maximum of four years." This article has similar wording to the definition of "torture" contained in article 1 of the Convention.

22. Article 4, paragraph 2, of the Government Regulation in lieu of Law No. 1 of 1999 on Human Rights Courts also states that a human rights court has the authority to hear a case of physical and mental suffering caused to members of a group. In addition, article 4 (f) of the same Regulation clearly states that the human rights court is also authorized to adjudicate "torture" used by officers in order to gain information or a confession either from the suspect or a third person, or to intimidate or force the suspect or a third person, or as an expression of discrimination in any form.

B. Political structure

23. According to the 1945 Constitution there are six organs of the State:

The People's Consultative Assembly (Majelis Permusyawaratan Rakyat, MPR);

The Presidency;

The House of Representatives (Dewan Perwakilan Rakyat);

The Supreme Advisory Council (Dewan Pertimbangan Agung);

The State Audit Board (Badan Pemeriksa Keuangan);

The Supreme Court (Mahkamah Agung).

24. Indonesia does not consider itself as a State with a strict three-level political system although it recognizes the system as shown by having the executive power in the hands of the President, legislative power in the hands of the House of Representatives and judicial power in the hands of the Supreme Court.

25. The MPR, the highest State institution, holds a session at least once in five years to determine guidelines to be executed by the executive for five years. Since the reform era of 1999 the People's Consultative Assembly has held its session on a yearly basis.

26. The President is the Head of Government and State. According to the Constitution, the President must fulfil his functions as determined by the MPR Assembly.

27. The main function of the House of Representatives, together with the Government, is to make the laws and to supervise the implementation by the Government of the Guidelines decided by the MPR. The House of Representatives may request the MPR to hold a special session if the House considers that the President has deviated from the State guidelines.

28. In accordance with article 16 of the 1945 Constitution and Law No. 3 of 1967 as amended by Law No. 4 of 1978, the functions of the Supreme Advisory Council (Dewan Pertimbangan Agung) are to provide information on any questions that the President may ask in relation to the political, economic, socio-cultural and military affairs of the State. The Supreme Advisory Council can also submit recommendations or express views on any matter of national importance.

29. The functions of the State Audit Board (Badan Pemeriksa Keuangan) are outlined in article 23 of the 1945 Constitution. Its main function is to conduct official examinations of governmental financial accounts. The findings of the Board are submitted to the House of Representatives, which approves the government budget.

30. The Supreme Court (Mahkamah Agung) is the judicial arm of the State and exists alongside the legislative and executive branches. It enjoys an independent status in the socio-political fabric. It was not until 1968 that the restructuring of the Supreme Court was completed to meet the conditions set out in the 1945 Constitution, i.e. to be free from government intervention in the exercise of justice. In 1970 a law was enacted that laid down the basic principle of Indonesia's judicial power.

C. The people

31. Indonesia consists of 27 provinces with about 500 tribes and, correspondingly, it has about 500 languages and dialects spoken in the archipelago. Indonesia has now become the fourth largest country in the world (210 million) after China, India and the United States of America. The people of Indonesia are a mix between the native people and the newcomers who came during the Neolithic Period (3000-2000 BC) from the mainland to the south through a large-scale migration.

32. Indonesia's population policy is directed towards development of the population as a human resource in order that national development can be effective and valuable, while the quality of life is gradually improved. Meanwhile, control of population growth is carried out through efforts to lower the birth and mortality rates, especially that of infants and children. These efforts in particular have been implemented through family planning programmes which have the purpose of improving the welfare of mother and child at the same time as creating a small, happy and prosperous family.

33. The birth rate declined drastically from 27.3 per 1,000 people in 1990 to 24.5 per 1,000 in 1993. In the meantime, the fertility rate also declined from 3.3 per 1,000 women of child-bearing age in 1990 to 2.87 in 1993. Several factors, including rising living standards, higher educational levels and improved health services, contributed to the birth rate decline. But the greatest proportion is attributable to the increasing number of people participating in family planning, especially young couples. Moreover, contraception has become more widespread and effective, making it easier to plan families, and sterilization of men and women has also become more common.

34. Postponement of conception in marriages and later marriage have also become more popular. The available data show that the average age for marriage rose from 20.0 in 1980 to 21.9 in 1990.

35. According to the statistics, the life expectancy at birth for a man in the late 1960s was 45.7 years, compared to 60.7 years in 1988 and 63.55 in 1999. Women's life expectancy is even higher: 67.41 years in 1999. The crude death rate in 1988 was 7.9 per 1,000 people

against 7.51 per 1,000 in 1999. The infant mortality rate declined from 67 per 1,000 live births in 1988 to 46 in 1999. Furthermore, the crude death rate decreased about 45.1 per cent for the period of 1971-1990, meaning 2.3 per cent per year.

36. Causes for the decline in the mortality rate include better nutrition, a rising standard of living, advances in medical science, growth of medical facilities, improved health measures, better working conditions, education in personal hygiene and small nuclear families.

37. As in many countries, particularly those in the developing world, the city is always a major attraction for the rural population. This is especially true where the land no longer offers an effective means to earn a living. Indonesia is no exception. Over the years, particularly since the end of the Second World War, cities have grown rapidly in population, so much so that municipal governments have not been very successful in coping with the impact of urbanization. The needs for employment, housing, transportation and other social requirements are pressing.

D. Geography

38. Indonesia is the largest archipelago in the world. It consists of five major islands and about 30 small groups. The figure for the total number of islands is 17,508 according to the Indonesian Naval Hydro-Oceanographic Office. The archipelago is at the crossroads of two oceans, the Pacific and the Indian, and bridges two continents, Asia and Australia. This strategic position has always influenced the cultural, social, political and economic life of the country.

39. The territory of the Republic of Indonesia stretches from 6° 08' north latitude to 11° 15' south latitude, and from 94° 45' to 141° 05' east longitude. The Indonesian sea area is four times greater than its land area, which is about 1.9 million square km. The sea is about 7.9 million square km (including an exclusive economic zone) and constitutes about 81 per cent of the total area of the country.

40. The five main islands are: Sumatra, which is about 473,606 km^2 in size; the most fertile and densely populated islands, Java/Madura, 132,107 km^2; Kalimantan, which comprises two thirds of the island of Borneo and measures 539,460 km^2; Sulawesi, 189,216 km^2; and Irian Jaya, 421,981 km^2, which is part of the world's second largest island, New Guinea. Indonesia's other islands are smaller in size.

41. The archipelago is divided into three groups. The islands of Java, Sumatra and Kalimantan, and the small islands in between, lie on the Sunda Shelf which begins on the coasts of Malaysia and Indo-China, where the sea depth does not exceed 700 feet. Irian Jaya is part of the island of New Guinea, and the Aru Islands lie on the Sahul Shelf, which stretches northwards from the Australian coast. Here the sea depth is similar to that of the Sunda Shelf. Located between these two shelves is the island group of Nusa Tenggara, Maluku and Sulawesi, where the sea depth reaches 15,000 feet. Coastal plains have been developed around the islands of Sumatra, Java, Kalimantan and Irian Jaya.

42. The land area is generally covered by thick tropical rain forest, where fertile soils are continuously replenished by volcanic eruptions like those on the island of Java.

43. There are about 583 languages and dialects spoken in the archipelago. These normally belong to the different ethnic groups of the population. Some of the distinctly different local languages are: Acehnese, Batak, Sundanese, Javanese, Sasak, Tetum of Timor, Dayak, Minahasa, Toraja, Buginese, Halmahera, Ambonese, Ceramese, and several Irianese languages. To make the picture even more colourful, these languages are also spoken in different dialects.

44. The national language of Indonesia is "Bahasa Indonesia". Originally it was the Malay language mainly spoken in the Riau Islands. In its spread throughout the country, its vocabulary and idioms have been enriched by a great number of local languages. To keep pace with religious, social and cultural progress, many words and terms have been derived from foreign languages, including Dutch, Chinese, Sanskrit, Arabic and Portuguese. Although Bahasa Indonesia has become the lingua franca, local languages and dialects continue to be spoken and will not be abolished.

E. General framework within which human rights are protected

45. As noted above, the concept of human rights is not new to the Indonesian people. The commitment of the Government of the Republic of Indonesia to the promotion and protection of human rights formally began with the promulgation of the 1945 Constitution. Although it is not as comprehensive as the Universal Declaration of Human Rights of 1948, the 1945 Constitution has guaranteed the human rights of the Indonesian citizens. Therefore, from the constitutional point of view, Indonesia has long recognized the importance of and guaranteed the implementation of human rights values.

46. In realizing the implementation of the promotion and protection of human rights, as guaranteed by Indonesia's Constitution, Indonesia has introduced some legal instruments to provide ways and means, especially for legal authorities, to assure the implementation of human rights for Indonesian citizens. These include Decree No. XVII and Law No. 39, mentioned above. The latter, besides containing provisions on the principles of the promotion and protection of human rights, at the same time also strengthened the National Commission of Human Rights established in 1993. And according to the Government Regulation in Lieu of Law No. 1 of 1999 on Human Rights Courts, also mentioned above, in an emergency situation human rights courts must be established so that cases of gross violations of human rights can be better processed.

47. Since the end of the "New Order Government", which was then replaced by the then "Development Reformation Cabinet" under the leadership of President Bacharuddin Jusuf Habibie, the Indonesian Government has given increasing recognition to the implementation of human rights. This concern has been concretely spelled out in the National Plan of Action on Human Rights 1998-2003 which was formally launched on 25 June 1998, exactly five years after the adoption of the Vienna Declaration and Programme of Action. The National Plan of Action on Human Rights was formally declared by Presidential Decree No. 129

of 15 August 1998. The declaration of the National Plan of Action on Human Rights is an important milestone, because at that time not many countries in the Asian Pacific region had a National Plan of Action. Indonesia's National Plan of Action has four main pillars: (i) preparation for ratification of international human rights instruments; (ii) dissemination of information and education of human rights; (iii) implementation of priority issues on human rights; and (iv) implementation of the international human rights instruments that have been ratified by Indonesia.

48. In the framework of democratic multi-party general elections, which were held on 7 June 1999, the majority of the political parties also declared the promotion and protection of human rights as part of their political programmes. There was no government intervention in support of a certain political party in the general elections. The National Unity Cabinet under the leadership of President Abdurrahman Wahid has reiterated its commitment to advance human rights as reflected, inter alia, through the appointment of a State Minister of Human Rights Affairs.

49. Bearing in mind the information and situation mentioned above, the Indonesian Government will systematically report on the steps it has taken in the legislative, administrative and judicial sectors and other steps to prevent torture and other cruel, inhuman or degrading treatment or punishment.

50. On 20 August 2000 the MPR endorsed the second amendment to the 1945 Constitution. This is also a very important development in the field of the promotion and protection of human rights in Indonesia and showed, inter alia, the gradual greater attention paid to human rights in Indonesia. The second amendment includes a new chapter on human rights, consisting of 10 articles, as follows:

Chapter XA

HUMAN RIGHTS

Article 28A

Everyone has the right to life and the right to defend his/her life and livelihood.

(1) Every person has the right to found a family and to have offspring through a legal marriage.

(2) Every child has the right to survive, grow and develop and has the right to protection from violence and discrimination.

Article 28C

(1) Everyone has the right to develop himself or herself through the fulfilment of his or her basic needs, has the right to have an education and enjoy the benefits of science and technology, art and culture, in order to enhance the quality of his or her life and for the welfare of humanity.

(2) Everyone has the right to develop himself or herself collectively in order to defend his or her right to develop the community, the nation and the country.

Article 28D

(1) Everyone has the right to equal recognition, guarantees, protection and treatment before the law.

(2) Everyone has the right to work and to receive fair and reasonable remuneration and treatment in the working relationship.

(3) Every citizen is entitled to equal opportunity to participate in the governance of the State.

(4) Every person has the right to citizenship.

Article 28E

(1) Everyone is free to have a religion and to practise his or her religion, to choose the kind of education and teaching, to choose a job, to choose a citizenship, to choose the place of residence in the territory of the State, and to leave and to return to his or her country.

(2) Everyone has the right to freedom of belief and to express his or her opinion and ideas in accordance with his or her conscience.

(3) Everyone is entitled to freedom of assembly, association and expression.

Article 28F

Everyone has the right to communicate and to obtain information in order to develop his or her personality and social environment, and has the right to seek, to acquire, to possess, to keep, to use and to convey information utilizing all available means.

Article 28G

(1) Everyone has the right to the protection of his or her privacy, family, honour, dignity, and property under his or her authority, and entitled to security and to protection from any threat to do or not to do anything which is considered a human right.

(2) Everyone has the right to be free from torture or inhuman or degrading treatment and has the right to seek asylum in another country.

Article 28H

(1) Everyone has the right to physical and spiritual welfare, to have a place to live and to have a proper and healthy living environment, and the right to enjoy health services.

(2) Everyone has the right to facilities and special treatment for equal opportunities and benefits in order to secure equality and justice.

(3) Everyone has the right to social guarantees to enable him or her to develop himself or herself fully as a dignified human being.

(4) Everyone has the right to own personal property and shall not be deprived of that right arbitrarily by anyone.

Article 28I

(1) The right to life, the right not to be tortured, the right of freedom of thought and conscience, the right to have a religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted based on retroactive law and regulation are non-derogable human rights.

(2) Everyone has the right to be free from discrimination in any form and has the right to be protected against discrimination.

(3) Cultural identity and the rights of traditional communities shall be respected in accordance with the progress of the developing individual and of human civilization.

(4) The protection, promotion, enforcement and fulfilment of human rights are the responsibility of the State, in particular, the Government.

(5) In order to enforce and protect human rights in accordance with the principles of a democratic State governed by the rule of law, the implementation of human rights must be guaranteed, organized and codified in a legal document.

Article 28J

(1) Everyone has the obligation to respect others' human rights in the framework of the life of the community, the nation and the State.

(2) In exercising his or her rights and freedoms, everyone is subject to any limitation determined by law and regulation whose sole purpose is merely to guarantee recognition and respect of others' rights and freedoms and to meet the just requirements of morality, religious values, security and public order in a democratic society.

F. The Convention and other international agreements

51. Several main international human rights instruments that have been ratified by the Indonesian Government include:

International Convention on the Elimination of All Forms of Racial Discrimination, ratified by Law No. 29 of 1999;

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Law No. 5 of 1998;

International Convention against Apartheid in Sports of 1985, ratified by Presidential Decree No. 48 of 1993;

Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, ratified by Presidential Decree No. 58 of 1991;

Convention on the Rights of the Child, ratified by Presidential Decree No. 36 of 1990;

Convention on the Elimination of all Forms of Discrimination against Women, ratified by Law No. 7 of 1984;

Convention on the Political Rights of Women of 1952, ratified by Law No. 68 of 1958;

Geneva Conventions of 1949, ratified by Law No. 59 of 1958.

52. In addition, Indonesia has also ratified some ILO Conventions which are also relevant to human rights, as follows:

Convention (No. 182) concerning the Worst Forms of Child Labour, ratified by Law No. 1 of 2000;

Convention (No. 105) concerning the Abolition of Forced Labour, ratified by Law No. 19 of 1999;

Convention (No. 138) concerning Minimum Age for Admission to Employment, ratified by Law No. 20 of 1999;

Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation, ratified by Law No. 21 of 1999;

Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organize, ratified by Presidential Decree No. 83 of 1998;

Convention (No. 100) concerning Equal Remuneration, ratified by Law No. 80 of 1957;

Convention (No. 98) concerning Right to Organize and Collective Bargaining, ratified by Law No. 18 of 1956;

Convention (No. 29) of 1930 concerning Forced Labour, ratified by Staasblad No. 261 of 1933.

53. According to article 7 (2) of Law No. 39 of 1999 on Human Rights, international law that has been adopted by the State of the Republic of Indonesia on human rights becomes national law. In this regard, all human rights-related conventions that have been ratified by Indonesia become new laws for Indonesia.

54. Indonesia is also now in the process of ratifying the International Covenant on Civil and Political Rights together with the International Covenant on Economic, Social and Cultural Rights. It is hoped that in the year of 2001 both Covenants can be ratified.

55. In accordance with the National Action Plan on Human Rights 1998-2003, the Government has taken steps to improve its efforts in upholding the law that gives proper procedural guarantees. Meanwhile, through cooperation with the Office of the United Nations High Commissioner for Human Rights on the implementation of the project document on technical cooperation, signed on 4 March 1999, the Government will implement programme activities that comprise:

(a) The development of human rights education for law enforcement and military personnel;

(b) The improvement of access to international human rights instruments by judicial and governmental institutions, non-governmental organizations, educational institutions and the mass media; "training of trainers" (TOT) courses on standard teaching of human rights (judges, lawyers, prosecutors);

(c) The improvement of TOT for penitentiary officials on the Standard Minimum Rules for the Treatment of Prisoners.

G. Competent authorities

56. The authorities competent to handle issues contained in the Convention are the Department of Justice and Human Rights, the Indonesian National Police, the Attorney-General, and the Department of Defence. However according to the Penal Code (KUHP) and the Law of Criminal Procedure (KUHAP), the most competent institutions are the Indonesian National Police, the Attorney-General, and the Department of Justice and Human Rights. Torture committed by the Indonesian Army (TNI) is handled by the Military Police, military prosecutors and military judges in accordance with Law No. 31 of 1997 on the Military Court.

H. Disciplinary steps and steps to increase awareness

57. On 1 August 1998, the Indonesian Government issued an instruction in the form of Standard Operational Procedure (SOP) to TNI officers in handling human rights in the troubled areas of Indonesia, especially in East Timor. The instruction includes nine principles as follows:

(a) Respect the spirit of the Universal Declaration of Human Rights;

(b) Order must be based on the law;

(c) Respect the integrity of people and human values;

(d) Obey the Military Honourable Ethics Code;

(e) Respect and protect human rights;

(f) Do not kill, rape, or inflict harm;

(g) Do not kidnap;

(h) Do not destroy buildings or other people's property;

(i) Do not inflict arbitrary punishment.

58. The National Police have issued some standard operational procedures that provide guidelines to security personnel in handling peaceful demonstrations. Standard Operational Procedure Nos. 10/VIII of 1998 for controlling demonstrations, 15/XII of 1998 concerning stern measures and 09/VII of 1998 concerning looting provide clear direction on the devices that may be used by security personnel to avoid torture.

59. As a response to the public criticism against the police being a part of the armed forces, the Indonesian Government has decided, through Presidential Decree No. 89 of 2000 on the Status of the National Police of the Republic of Indonesia, to separate the police from the armed forces as of 1 April 1999 with a two-year transition period; from 1 January 2001, the National Police would be completely independent from the armed forces.

60. The Government has started to review the national legal system with a view to restructuring the position of the justice system within the system of laws. The restructuring is aimed at strengthening the independence of judges. The Government has promulgated Law No. 35 of 1999 to supplement Law No. 14 of 1970 on the Basic Principles of the Authority of Justice.

61. Relating to the effort to maintain justice and to protect rights, the Government has formulated the revised draft Penal Code which covers issues related to security of the State. In the revised package, the controversial Law on Subversion No. 11/PNPS of 1963 has been

revoked by Law No. 26 of 1999. The Government is now also reviewing Law No. 8 of 1981 on the Law of Criminal Procedure. In addition, the Government is now in the final drafting process of the new law on the Penal Code so that it will be more responsive and more accommodating and to enable it to guarantee the promotion and protection of human rights.

62. In connection with the stern measures against security personnel who violate human rights, it is recorded that in January 1999, 23 Indonesian soldiers were punished with one to four years in jail and were dismissed from the military because they were convicted of torturing prisoners in Aceh. Also, in April 1999, 11 soldiers, including 8 officers, were punished with one to three years in jail and dismissed from military service because they were proved to have been involved in the kidnapping of Mr. Tengku Bantaqiah. In addition, on 17 May 2000, the Banda Aceh Public Court sentenced 11 members of the armed forces to 8 years and 6 months in jail and sentenced 13 officials to 9 years, for killing Mr. Bantaqiah; one person got a 10-year jail sentence.

I. Information and publicity

63. As soon as the Government ratified the Convention, it printed the Convention and the law in a small red book so that people could easily read it. In addition, the Government also welcomed the printing of the Convention by private companies. The Government has distributed the book to all relevant parts of the government apparatus in Indonesia and to universities in various parts of the country. The Government also has conducted several seminars in various parts of the country to increase the awareness of the people that Indonesia has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Government of Indonesia is also open to cooperation in the field of human rights with other Governments or institutions such as with the Governments of Australia and New Zealand and the Office of the High Commission for Human Rights, to conduct activities related to the promotion and protection of human rights such as seminars and workshops.

II. INFORMATION RELATED TO ARTICLES 2-16 OF THE CONVENTION

Article 2: Prohibition of torture

64. The Indonesian State philosophy Pancasila, particularly its second principle, a just and civilized humanity, requires that human beings be treated with due regard for their dignity as God's creatures. It emphasizes that the Indonesian people do not tolerate physical or spiritual maltreatment of human beings by their own people or by any nation. It means that these two highest laws imply the assurance of the prohibition of torture.

65. It is understandable therefore that the highest State institution in the country, the People's Consultative Assembly (MPR), in 1998 stated that freedom from torture is a non-derogable human right. Article 37 of MPR Decree No. XVII of 1998 on Human Rights clearly stated that the right not to be tortured is a non-derogable right. Article 25 also stated that every person has the right to be free from torture or degrading treatment.

66. In line with the decision of the highest State institution, the House of Representatives, in cooperation with the Government, in 1999 defined torture as contained in the Convention and decided that freedom from torture is also a non-derogable human right. Article 4 of Law No. 39 of 1999 on Human Rights clearly states that the right not to be tortured is a non-derogable right. Article 33 (1) of Law No. 39 resembles the Convention in stating "every person has the right to be free from torture and other cruel, inhuman or degrading treatment or punishment". Article 1 (4) of Law No. 39 of 1999 on Human Rights states that "torture is any activity which is undertaken intentionally so as to cause someone severe pain or suffering, whether physical or mental, in order to obtain a confession or information from that person or a third person, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".

67. In accordance with the commitment of the Indonesian Government and people to apply the provisions of the Convention, in 1999 the Government introduced Government Regulation in lieu of Law No. 1 of 1999 on Human Rights Courts which provided a vehicle for punishing those who commit torture. Article 4 of the Regulation states that torture is one of the acts that will be under the jurisdiction of the human rights courts. Article 4 (f) states that "torture is an act by a competent authority causing severe pain or suffering, whether physical or mental, in order to obtain a confession or information from someone or a third person, or in order to threaten or coerce that person or a third person, or for any discriminatory reason on any grounds". Article 8 of the Regulation states clearly that "every official who carries out activities as defined in article 4, part f, will be punished with capital punishment, life imprisonment or imprisonment for 15 years, and at least 3 years".

68. These developments clearly reflect Indonesia's willingness to harmonize its laws so as to abide by the provisions of the Convention. Even before the rapid developments in human rights took place in 1998, the Special Rapporteur of the United Nations, Prof. P. Kooijmans, during his visit to Indonesia in 1991 already acknowledged that "basic human rights, including the right to physical and mental integrity, are guaranteed by the Indonesian State philosophy and legislation". Prof. P. Kooijmans' important, categorical statement was also an important consideration of the Government of Indonesia in ratifying the Convention against Torture.

69. Although it does not use the term "torture", the Penal Code of Indonesia (KUHP) and the Law of Criminal Procedure (KUHAP) already contained provisions which implied the prohibition of torture. Articles 351 to 358 of the Penal Code of Indonesia, for example, prohibit the act of "maltreatment" which is very close in meaning to torture as defined in the Convention. Article 351 (1) states that "Maltreatment shall be punished by a maximum imprisonment of two years and eight months or a maximum fine of 300 rupiahs". Paragraph 2 of the same article states that "If the act results in a serious physical injury, the offender shall be punished with a maximum sentence of five years' imprisonment".

70. Article 50 of the Law of Criminal Procedure (KUHAP) states that a suspect or an accused in detention should be investigated immediately for the sake of the law, and shall not be arbitrarily detained and ill-treated. This provision is aimed at preventing any authorities from

committing torture even during the investigation of a criminal suspect. The principle of habeas corpus is also an important principle in the Indonesian legal system. That is why in the Law of Criminal Procedure (KUHAP) of 1981 the pre-trial (pra-peradilan) concept by which the investigator can be brought to trial if the arrest or detention is illegal or unlawful was introduced and became one of the most fundamental developments in the Indonesian criminal legal system. This principle is to prevent the violation of somebody's human rights, i.e. the investigator/police must have a legal reason to arrest or detain a person who is accused of having committed a crime. In this case a person who is accused of having committed torture also has a right to be treated legally and fairly.

71. Even in an emergency situation, the existing law has already taken care to prevent the act of torture. Article 57 of Law No. 23 of 1959 on Emergency Situations states that "the civil emergency administrators or the military emergency/war administrators who abuse their authority shall be imprisoned for a maximum of five years". In addition, article 51, subsection 2, states "Unauthorized instruction shall not eliminate the criminal responsibility unless the person receiving the order believes in good faith that the order is lawful and that it is his or her duty to carry out the order". Article 3 of Government Regulation (PP) No. 30 of 1980 prohibits civil servants from taking revenge on or arbitrary action against a subordinate. In addition, Government Regulation No. 30 of 1980 on Discipline of Public Servants states that public servants shall not perform any activities that might be considered as or related to torture.

Article 3: Prohibition of refoulement or extradition of a person to another State where he/she might be tortured

72. Although there has not yet been a law or regulation that specifically prevents the expelling, return or extradition of a person to another State where that person might be subjected to torture, from certain provisions of Law No. 1 of 1979 on Extradition it can be inferred that this concern has been taken into consideration. Article 13 of the said Law states: "The extradition request is rejected if the crime for which the extradition is requested is liable to the death penalty under the law of the requesting State but not under the national law, or the penalty is not always carried out, unless the requesting State provides a sufficient guarantee that the death penalty will not be carried out in respect of the person concerned". Article 15 states that an extradition request will be rejected if the person whose extradition is requested will be pursued, punished, or detained for another crime he/she committed unless the President gives permission.

73. According to the Immigration Law, the State authority in charge of expelling or returning a person from Indonesia is the Attorney-General and there is a specific rule on that. Should the Attorney-General decide to expel or return a person, that person has the right to appeal that decision. However, that a person shall not be expelled or returned to another country where that person might be subjected to torture is not yet the subject of a specific law and so far there has been no such case in Indonesia.

74. Article 6 and article 23 of MPR Decree No. XVII of 1998 states: "Everyone has the right to the protection of his or her own personality, family, dignity and property".

Article 4: Criminalization of torture or attempts to commit torture, and the punishment for torture

75. In Indonesian laws and regulations, besides what is stated in article 4 of Law No. 39 of 1999 on Human Rights, there are legal provisions on the classification of torture, such as articles 422, 351, 353, 354, 355, 53 and 55 of the Penal Code. Article 422 of the Penal Code states that an official who in a criminal case uses force to secure a confession or information will be punished with a maximum of four years' imprisonment.

76. Article 351 of the Penal Code states that:

(a) The maltreatment will be punished with a maximum of two years and eight months in jail or a fine of 300 rupiahs;

(b) If the action causes serious injury, the guilty person will be punished with a maximum of five years in jail;

(c) If it causes death, it will be punished with a maximum of seven years in jail;

(d) The maltreatment is equal to intentional damage to health.

77. Article 353 of the Penal Code states that:

"(a) Maltreatment committed with premeditation shall be punished with a maximum imprisonment of four years;

(b) If the act results in a serious physical injury, the offender shall be punished with a maximum imprisonment of seven years;

(c) If the act results in death, he shall be punished by a maximum imprisonment of nine years."

78. Article 354 of the Penal Code states that:

"(a) A person who deliberately causes to another serious physical injury, shall, being guilty of serious maltreatment, be punished by a maximum imprisonment of eight years;

(b) If the act results in death, the offender shall be punished by a maximum imprisonment of 10 years."

79. Article 355 of the Penal Code states that:

"(a) Serious maltreatment committed with premeditation shall be punished by a maximum imprisonment of 12 years;

(b) If the act results in deaths, the offender shall be punished with a maximum imprisonment of 15 years."

80. The attempt to commit torture is also punishable in conjunction with article 53, which states that:

"(a) An attempt to commit a crime is punishable if the intention of the offender has revealed itself by his having begun the criminal act the performance of which is not completed only because of circumstances independent of his will;

(b) The penalty for attempt shall be one third of the basic punishment levied for the completed crime;

(c) If capital punishment or life imprisonment is imposed for a crime, a maximum imprisonment of 15 years shall be imposed for attempt;

(d) The additional punishments for attempts are the same as for the completed crime."

81. In addition, those who perpetrate or provoke torture are also punishable in accordance with article 55 of the Penal Code which states that:

(a) As principals of a punishable act shall be punished:

(i) Those who perpetrate, cause others to perpetrate, or take a direct part in the execution of the act;

(ii) Those who intentionally provoke the execution of the act by gifts, promises, abuse of power or of respect, force, threat or deception or by providing an opportunity, means or information;

(b) In respect of a person who provokes, only those acts which have been deliberately provoked and their consequence shall be considered.

82. These provisions have been strengthened in the verdict of the Banda Aceh Public Court No. 11/PID.B/KONEKS/2000/PN-BNA, of 17 May 2000, in which the court stated that States parties are obliged to include all of the act of torture as a criminal act in their laws. The same case also applies to anyone who commits, tries to commit, gives assistance to, or is involved in the act of torture. The States parties are also obliged to ensure that perpetrators of the criminal act can be punished with a penalty appropriate for that criminal act.

83. Subsection 2 of article 184 of the Penal Code states that a person who wounds someone will be punished with a maximum prison sentence of one year and four months. Subsection 3 of article 184 states that a person who causes serious wounds will be punished with a maximum prison sentence of four years.

84. So far there has been no case of an act of torture carried out by an Indonesian outside Indonesia.

Article 5: Scope of law/national jurisdiction

85. Article 103 of the Penal Code explains that the provisions of the first eight chapters of this Book shall also apply to acts on which punishment is imposed by other statutory provisions, unless determined otherwise by statute. Article 2 of the Penal Code states that the Indonesian statutory penal provisions are applicable to any person who is guilty of a punishable act within Indonesia. This means that the criminal procedure in national legislation is applicable to every person who commits a criminal act on Indonesian territory.

86. According to article 3 of the Penal Code, the Indonesian statutory penal provisions are applicable to any person who is guilty of a punishable act outside Indonesia on board an Indonesian vessel or aircraft.

87. According to article 8 of the Penal Code, the criminal procedure in national legislation is applicable to a ship's captain and the passengers on an Indonesian ship, who, even while off the ship, commit one of the criminal acts specified in chapter XXIX, Second Book, and chapter IX, Third Book, of the Penal Code and mentioned in the sea letter and ship's pass in Indonesia, as well as in the Scheppen Ordonnatie 1927.

Article 6: Arresting and detaining of a person suspected of committing torture

88. According to Law No. 39 of 1999 on Human Rights, torture, which is defined as in the Convention, is punishable. Articles 75-103 of the Law concern the National Commission on Human Rights. Article 89 (3) of the Law gives the authority to the National Commission on Human Rights to summon a person who has perpetrated a human rights violation, including torture. Article 104 concerns the human rights court and, inter alia, states that while waiting for a human rights court to be established, the public court will adjudicate the violation of human rights. A draft Law on Human Rights Courts is now before the House of Representatives, but it might be useful to discuss the previous Government Regulation in lieu of Law No. 1 of 1999 on Human Rights Courts which was rejected by the House of Representatives for allowing some improvements to be made, including to upgrade the Regulation to a law. Article 4 (f) clearly states that the human rights court has the authority to hear a case of torture committed by the authorities causing serious harm, physical or mental, with the aim of getting information or a confession from the tortured person or a third person, or to threaten or force that person or a third person, or by reason of discrimination in any of its forms. Article 10 of the regulation on the investigation, inspection, prosecution and examination of a case states that the National Commission on Human Rights shall only conduct an investigation of human rights violations. Article 12 states that investigation and prosecution of a case of human rights violation will be conducted by a team which is established by and under the coordination of the Attorney-General.

89. In addition, there are some legislative measures on the arresting and detaining of a person alleged to have committed "torture" (maltreatment):

(a) Articles 20-31 of the Law of Criminal Procedure (KUHAP) concern the authority of an investigator, general prosecutor and judge to detain. Article 21 (4) states that the types of criminal act in question are limited to criminal acts that may be punished by a maximum of five years in jail;

(b) Articles 25-27 of Law No. 1 of 1979 on Extradition concerns the arrest and detention of a person whose extradition is requested in connection with a crime;

(c) In addition to part (a) of this paragraph, subsection 3, article 57 (2), of the Law of Criminal Procedure (KUHAP) also contains a provision regarding the arresting and detention of a torture suspect. The article states that a detained suspect or accused who is a citizen of a foreign country has the right to contact and talk to his/her consular representative in connection with the case.

90. Article 21 of the Law of Criminal Procedure states that:

(a) A warrant of detention or warrant of further detention shall be served on a suspect or an accused who is strongly presumed to have committed an offence based on sufficient evidence, in cases where there are circumstances which give rise to concern that the suspect or the accused will escape, damage or destroy physical evidence and/or repeat the offence;

(b) An investigator or public prosecutor shall detain or further detain a suspect or defendant by presenting a warrant of detention or the ruling of a judge which sets forth the identity of the suspect or the accused and states the reason for detention and a brief explanation of the criminal case of which he is suspected or accused and his place of detention;

(c) A copy of the warrant of detention or further detention or of the ruling of the judge must be provided to the family;

(d) The detention may only be applied to a suspect or an accused who has committed an offence and/or has attempted or abetted said offence where:

(i) The offence is liable to imprisonment for five years or more;

(ii) The offence is as intended by article 282, section (3), article 296, article 335, section (1), article 351, section (1), article 353, section (1), article 372, article 378, article 379a, article 454, article 455, article 459, article 480 and article 506 of the Penal Code.

91. In the case of Tengku Bantaqiah in Aceh, the person suspected of committing "torture" had been detained for the sake of the legal procedure. On 17 May 2000 the Banda Aceh Public Court found guilty of torture 24 military personnel. According to the verdict of the Banda Aceh Public Court No. 11/PID.B/KONEKS/2000/PN-BNA of 17 May 2000, the judges took into consideration, inter alia, article 7 (1) of the Rome Statute of the International Criminal Court of 17 July 1998 and Law No. 5 of 1998 on the Ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In the verdict (pp. 208-209), the court quoted article 2 of the Convention.

Article 7: Trial or extradition of someone suspected of torture

92. Article 1 of Law No. 1 of 1979 on Extradition defines "extradition" as the surrender by one State to another State which so requests of a person who is accused or convicted of a crime outside the territory of the surrendering State and within the jurisdiction of the territory of the requesting State. In extradition agreements with other countries, the Convention can be considered as a basic principle. Basically, there is no principle of reciprocity in extraditing torturers.

93. Article 4 of the Law on Extradition states that extradition shall be granted in respect of the crimes mentioned in the list of crimes attached to the Act. The list of crimes states that "torture" is extraditable.

94. Article 10 of the Law on Extradition states that a request for extradition shall be refused if a judgement passed by the competent court of the Republic of Indonesia in respect of the crime for which extradition is requested has become final.

Article 8: Classification of torture as a crime for extradition purposes

95. In 1979 Indonesia introduced Law No. 1 of 1979 on Extradition. According to this Law persons suspected of committing torture can be extradited. Part 3 of the Attachment to the Law mentions "torture" which causes serious injury or death, planned "torture" and serious "torture", and part 26 of the Attachment also states that "torture" on board ship is an extraditable crime.

96. Article 1 of Law No. 1 of 1979 on Extradition states that in the absence of an extradition agreement with other countries, the Convention can be considered as a basic principle. Subsection 2, article 2, of the Law states that in the absence of a treaty extradition may be granted on the basis of good relationship and if the interest of the State of the Republic of Indonesia so requires.

97. Until now there has been no case involving torture in which a suspect has been extradited from Indonesia or extradited from another country to Indonesia.

Article 9: Cooperation on legal matters between States parties

98. Indonesia has agreed to cooperation with other countries in criminal matters. For example, on 24 July 2000 Indonesia signed an Agreement on Mutual Legal Assistance in Legal Matters with the Government of the People's Republic of China. An agreement between the Governments of Indonesia and Australia on mutual legal assistance in legal matters was concluded on 27 October 1995 and was ratified by Law No. 1 of 1999. Indonesia is also now in the process of concluding an agreement on legal matters with other countries including the Republic of Korea and Papua New Guinea. Since torture is also a criminal matter, it can be included under those cooperation agreements.

99. In addition, Indonesia has concluded bilateral extradition agreements with Australia, Malaysia, the Philippines and Thailand. Indonesia and Hong Kong have signed a treaty on the surrendering of fugitive offenders. Furthermore, the Indonesian police is a member of INTERPOL which, inter alia, cooperated in the investigation process of a criminal matter.

Article 10: Education and information on the prohibition against torture

100. As mentioned at the beginning of this report, Indonesia has had several instruments at the national level such as the People's Consultative Assembly's Decree No. XVII of 1998 on Human Rights and Law No. 39 of 1999 on Human Rights. Accordingly, the education system in Indonesia has included the teaching of human rights at all levels of the education system. However, because of the heavy burden of the curriculum, particularly in the elementary schools, the teaching of human rights at the moment is not a separate subject but part of various other subjects. The teaching includes international conventions that have been ratified by Indonesia such as the Convention against Torture. In conjunction with this, the curricula of the Police Academy, the Military Academy and the training for prosecutors and judges now include human rights as a specific subject.

101. According to the decision of the Head of the National Police No. Skep/734/VII/1999 of 9 July 1999, a human rights course for police, entitled "Human Rights", was introduced. The course lasted 36 hours. With this course it is expected that Indonesian police will understand human rights and be to apply human rights in their tasks. In addition, the pocket book International Human Rights Standards for Law Enforcement: A Pocket Book on Human Rights for the Police has been translated by an NGO, LBH-APIK.

102. The armed forces also provide a specific course on human rights discussing some issues regarding the promotion and protection of human rights such as the concept of human rights, human rights in the Constitution, human rights in the State ideology, human rights in the Peoples Consultative Assembly's decrees, examples of conduct that violates human rights, examples of conduct that does not violate human rights, human rights and ethical codes of the armed forces, and an analysis of the armed forces' tasks in conjunction with human rights.

103. In addition, the legal enforcement institutions have their own curriculum on human rights which includes the prohibition of torture. In July 2000 the State Ministry for Human Rights prepared a pocket book for the police and armed forces on the promotion and protection of human rights. One of the objectives of this pocket book is to prevent any human rights violations by the armed forces and police, and to increase the knowledge of the community about the implementation of human rights in the environment of the armed forces and police.

104. The armed forces has also issued a new pocket book for the protection of human rights to all of its members. All officials in the field of legal enforcement in Indonesia have their own ethical codes. On 30 May 2000, the Chief of Staff of the Indonesian Army issued Decision No. Skep/214/V/2000 on Guidelines of the Indonesian Army in Implementing Human Rights.

The guideline is in the format of a pocket book and it is binding upon all army units and members. According to this decision, every soldier in the army must understand, enforce and apply human rights in carrying out his or her duties. The decision clearly spelled out three categories of human rights violations which must be avoided by all soldiers, i.e. abuse of power, violence by omission, and gross violation of human rights.

105. Indonesian doctors also have their own ethical codes which prevent any acts of torture and other cruel, inhuman or degrading treatment.

Article 11: Methods and practices of custody to prevent torture

106. Chapter X of Law No. 8 of 1981 on the Law of Criminal Procedure (KUHAP), entitled the Authority of the Courts, consists of seven articles, from article 77 to article 83, regulating the authority of the court in adjudicating criminal cases. Article 79 allows for a request to determine whether an arrest or detention is legal. Article 81 allows a request for compensation where a person was illegally arrested or detained. These mean that police, prosecutors and judges shall act in accordance with the Law and cannot display any conduct that can be categorized as torture in fulfilling their tasks. In addition, Indonesia also has a specific law on the implementation of custody, i.e. Law No. 12 of 1995 on Custody.

Article 12: Prompt and impartial investigation of acts of torture

107. Law No. 8 of 1981 on the Law of Criminal Procedure (KUHAP) specified that in all cases, including in the act of torture, the basic principle of the criminal investigation as contained in the Elucidation of Law No. 8 of 1981, part "e", and Law No. 35 of 1999 replacing Law No. 14 of 1970, must be applied, i.e. the trial process must be conducted in a quick, simple, low-cost, open, honest and impartial manner in all levels of trials. In addition, Law No. 28 of 1997 on the Indonesian Police, Law No. 2 of 1986 on Public Justice, Law No. 14 of 1985 on the Supreme Court and Law No. 31 of 1997 on Military Courts are also in line with the principles of prompt and impartial investigation in any criminal cases, including an act of torture.

108. Chapter V of the Law of Criminal Procedure (KUHAP) regulates the procedures for arrest, detention, personal search, house entry, and seizure and examination of documents. Articles 20-29 of the Law of Criminal Procedure (KUHAP) cover the procedures for conducting cases and impartiality.

109. The Indonesian Police have introduced a new emergency unit for reacting promptly to criminal cases. The Decision of the Chief of the Indonesian Police No. Pol:JUKNIS/01/11/1982, point 5 b, states that the investigation of any criminal cases (including on torture) must be conducted immediately or as quickly as possible. Article 50, parts 1 and 3, also imply a rapid process in the case of torture. Article 50, part 1, states that a suspect shall have the right to be examined promptly by an investigator and thereafter to have his case referred to the public prosecutor. Part 3 of the same article states that an accused shall have the right to be promptly adjudicated by the court.

110. In Indonesia the concept of torture is wider than the definition in the Convention. As shown by the verdict of the Supreme Court of the Republic of Indonesia on 28 April 2000 when hearing the case of "torture" where Ms. Susilawati binti Abubakar and two of her children mistreated Ms. Susiana binti Alamsyah on 27 January 1998, thereby wounding her. According to the Criminal Code of Indonesia, maltreatment is criminal conduct which should be penalized.

Article 13: Right of the victim to submit a complaint to the competent authorities

111. Government Regulation No. 27 of 1983 on the Implementation of the Law of Criminal Procedure provides for the possibility of complaint to the competent authorities. In addition, the Government is now preparing a law on the protection of victims and witnesses.

Article 14: Right of the victim to compensation

112. Articles 1365 and 1367 of Indonesian Civil Law (KUHPer) afford the possibility of compensation in any case. In addition, chapter XIII of Law No. 8 of 1981 in articles 98 to 101 stipulates that in a case where the victim suffered damage because of the criminal act being adjudicated, the chief judge, at the request of the victim, can combine the compensation request with the criminal case. In this regard, a victim in a case of torture can gain compensation by combining his or her compensation request into the main criminal case.

Article 15: Statements obtained by the use of torture

113. The Law of Criminal Procedure (KUHAP) does not explicitly govern the provisions of article 15 of the Convention, except article 117 which covers only information provided without force, without defining force.

114. Article 422 of the Penal Code (KUHP) states that any official who by misuse of power forces someone to do, not to do or to tolerate something, shall be punished by a maximum of two years and eight months in jail.

115. Article 117 of the Law of Criminal Procedure (KUHAP) states that:

(a) The testimony of a suspect and/or a witness to an investigator shall be given without pressure from anyone and/or in any form;

(b) Where a suspect testifies about what he has actually done in connection with the offence of which he is suspected, the investigator shall record it in the minutes as carefully as possible in the words used by the suspect himself.

116. Articles 184 and 185 of the Law of Criminal Procedure (KUHAP) governs witness information. According to the Elucidation of part 6 of article 185, the judge is reminded to ensure that information or statements obtained from a witness must in fact be provided freely, honestly and objectively.

Article 16: Prohibition of other cruel, inhuman or degrading treatment or punishment

117. Article 10 of the Penal Code shows that there is no inhuman or degrading treatment or punishment in Indonesia. In addition, article 422, subsection 1, of the Penal Code prohibits other cruel treatment.

118. In addition, the new amendment to the 1945 Constitution, People's Consultative Assembly Decree No. XVII of 1998 on Human Rights and Law No. 39 of 1999 on Human Rights clearly state the prohibition of any cruel, inhuman or degrading treatment or punishment.

III. DIFFICULTIES IN THE IMPLEMENTATION OF THE CONVENTION

119. Although Indonesia has had a strong commitment to implement human rights since the 1990s, as shown, inter alia, by the second amendment to the 1945 Constitution, People's Consultative Assembly Decree No. XVII of 1998 on Human Rights, Law No. 39 of 1999 on Human Rights, the Indonesian National Plan of Action on Human Rights and the ratification of some human rights conventions, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Government has encountered some difficult situations as follows:

(a) Lack of financial resources, especially due to the financial crises which hit the country in 1997, is the main obstacle in fulfilling its commitment. The publication and dissemination of important human rights principles and information in the Indonesian language to various community groups and institutions are very essential in increasing the awareness of people about human rights. However, the Government is still in a difficult situation in setting this as the highest priority as other things also need to be considered and improved. The Government has already printed some human rights-related documents such as Rencana Aksi Nasional Hak Asasi Manusia (Indonesian Plan of Action on Human Rights) and the Law on the Ratification of Conventions; however, due to limited resources, these documents only reached a limited number of groups such as universities and other institutions. If there were resources available, the publication and dissemination of human rights information and documents could be expanded;

(b) The geographical characteristics of the Indonesian archipelago, which consists of more than 17,000 islands, makes the implementation of law enforcement difficult, especially conducting prompt investigations in the remote areas. Some good programmes, including in the area of the promotion and protection of human rights, cannot easily be implemented because many people live in very remote areas. As a consequence, the ratified human rights conventions such as the Convention against Torture need more time to reach all the people;

(c) Lack of human resources, particularly in the area of law enforcement and human rights, is also a hindrance for the Government in fulfilling its noble commitment. The number of police, prosecutors and judges is not yet adequate to cover all of the country.

IV. CONCLUSION

120. The initial report on the constitutional, legislative and regulatory measures which have been taken by the Indonesian Government in conjunction with the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment made the following conclusions:

(a) The Indonesian Government has a serious and strong commitment to promote and protect human rights and to do its utmost in guaranteeing the implementation of the Convention;

(b) There has been an obvious development in the harmonization of laws in Indonesia so as to reflect the implementation of the Convention against Torture, as shown by the second amendment to the 1945 Constitution, People's Consultative Assembly Decree No. XVII of 1998 on Human Rights and Law No. 39 of 1999 on Human Rights which clearly state that the right not to be tortured is a non-derogable right in any situation;

(c) There is a need to renew and harmonize some national legislation; on the other hand, there are some advanced provisions in the said legislation for the protection of every individual from torture and other cruel, inhuman and degrading treatment or punishment;

(d) The Indonesian Government makes a commitment to solve any violations against the Convention according to the existing law.

List of annexes

1. 1945 Constitution.
2. People's Consultative Assembly Decree No. XVII of 1998 on Human Rights.
3. Law No. 39 of 1999 on Human Rights.
4. Government Regulation in lieu of Law No. 1 of 1999 on Human Rights Courts.
5. Penal Code (KUHP).
6. Law No. 8 of 1981 on the Law of Criminal Procedure (KUHAP).
7. Law No. 28 of 1997 on the Indonesian State Police.
8. Law No. 1 of 1979 on Extradition.
9. Supreme Court Decision No. 637 K/Pid/1999 of 28 April 2000.